IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.198 OF 2006

Vasant Kisan Gaikwad & Ors. ...Appellants
vs.
Rajendra Mahadev Patil ...Respondent

M/s.G.Dwivedi & Co. for the Appellants
Mr.S.R.Page for the Respondent

CORAM: A.S.OKA, J.
DATED: MARCH 16, 2006.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the legal representatives of the original Defendant. The suit filed by the Respondent-Plaintiff was decreed by the Trial Court by holding that the respondent-Plaintiff has established his title in respect of the suit property. The Trial Court held that the Respondent has validly terminated the tenancy of the original Defendant in respect of the suit property. The plea of adverse possession raised by the original Defendant has been negatived by the Trial Court.

2. The original Defendant preferred an Appeal in the District Court and the same has been dismissed by the impugned Judgment and Decree.

3. The learned Advocate for the Appellants submitted that the Respondent had no title in respect of the structure in possession of the original Defendant. He therefore submitted that as the original Defendant was not a tenant in respect of the structure,the suit filed by the Respondent could not have

been decreed.

4. I have considered the submissions. From paragraph 4 of the Judgment of the lower Appellate Court, it appears that the the only contention raised in the Appeal by the original Defendant was that notice of termination of the tenancy issued by the Respondents was not for the statutory period. There is no ground taken in the Second Appeal that any other contention was raised before the lower Appellate Court and the same was not considered by the lower Appellate Court.

5. On consideration of the documentary evidence on record and on considering the Amendment to the Transfer of Property Act, 1882 made by the Transfer of Property (Amendment) Act 2002, the lower Appellate Court came to the conclusion that the notice of termination of tenancy was legal and valid. The Appellate Court also noted that there was a forfeiture of the tenancy due to the fact that the original Defendant denied the title of the original Plaintiff. There is no error in the findings recorded by the Appellate Court. There is no dispute about the service of notice as the original Defendant replied to the notice. The reply to the notice shows that the same was served on 10th October 1992. The notice provides that the tenancy will stand terminated with effect from 31st October 1992. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.